IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15155 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAILASHBEN RAMANLAL AMIN

Versus

DANABHAI PASHABHAI VANKAR

Appearance:

1. Special Civil Application No. 15155 of 2004

MR RA PATEL for Petitioner No. 1

MR DJ BHATT for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2-6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 24/02/2005

ORAL JUDGEMENT

#. In this petition filed under Article 227 of the Constitution of India, the petitioner has challenged the

legality and validity of the judgment and order dated 4.4.1997 passed in Revision Application No.TEN.BA.562 of 1989 in dismissing the same and confirming the order passed by the Deputy Collector (Land Reforms) Appeals, Kheda dated 22.4.1985 in Tenancy Appeal No.61 of 1985 by which the Deputy Collector has allowed the said appeal by quashing and setting aside the order passed by the Mamlatdar and ALT, Khambhat dated 5.1.1985 in Tenancy Case No.441/82 - Tarapur.

#. The application was submitted by respondent Nos.1 and 2 herein for declaring them as tenants under Section 32(1)(b) of the Bombay Tenancy and Agricultural Lands Act ("the Act" for short) in the year 1982 being Tenancy Case No.441 of 1982 in respect of the land situated at Tarapur bearing Survey Nos.1910, 2153/2, 2156 and 2154. That the Mamlatdar and ALT, Khambhat by his order dated 5.1.1985 dismissed the said application by holding that respondent nos.1 and 2 have failed to prove that they were in possession of the land in questions as tenants on 15.6.1955. Being aggrieved and dissatisfied with the order passed by the Mamlatdar and ALT, Khambhat dated 5.1.1985 in Tenancy Case No.441 of 1982, respondent nos.1 and 2 herein preferred Tenancy Appeal No.61 of 1985 before the Deputy Collector (Land Reforms) Appeals, Kheda and the Deputy Collector (Land Reforms) Appeals, Kheda by his order dated 22.4.1985 allowed the said appeal by quashing and setting aside the order passed by the Mamlatdar and ALT, Khambhat dated 5.1.1985. Being aggrieved and dissatisfied with the order passed by the Deputy Collector (Land Reforms) Appeals, Kheda dated 22.4.1985 in Tenancy Appeal No.61 of 1985, the petitioner preferred Revision Application No.TEN.BA.562 of 1989 before the Gujarat Revenue Tribunal, Ahmedabad which came to be dismissed by the Gujarat Revenue Tribunal by its order dated 4.4.1997 on the ground that the said revision application is filed beyond the period of limitation. Being aggrieved and dissatisfied with the order passed by the Gujarat Revenue Tribunal dated 4.4.1997 in Revision Application No.562 of 1989 in dismissing the same, the petitioner has preferred this petition under Article 227 of the Constitution of India on 18.6.2004, i.e. after a period of seven years of dismissing the revision application by the Gujarat Revenue Tribunal.

#. Mr.R.A.Patel, learned advocate appearing for the petitioner, has submitted that as the petitioner was out of India and was residing at America and she is having the mother of old age who is also illiterate and there was nobody to look-after her and also to look-after the cases and in fact, she was not aware of the order passed

by the Gujarat Revenue Tribunal dated 4.4.1997 in dismissing Revision Application No.TEN.BA.562 of 1989, and, therefore, when the petitioner has returned from America, she came to know about the order passed by the Gujarat Revenue Tribunal dated 4.4.1997 and, therefore, immediately, the petitioner has preferred the present petition and, therefore, requested to entertain the present petition by condoning the delay.

#. In response to the notice issued by this Court, Mr.D.J.Bhatt, learned advocate appears for respondent Nos.1 and 2 - original tenants. Affidavit-in-reply is also filed on behalf of respondent No.1. It is specifically denied that the petitioner was not having knowledge of the order passed by the Gujarat Revenue Tribunal dated 4.4.1997. From the documentary evidence, such as passport, more particularly, entry in the passport, Mr.Bhatt has submitted that the passport appears to be issued to the petitioner on 14.5.2001, while the impugned order has been passed on 4.4.1997, meaning thereby, when the order was passed, the petitioner was very much within the country, and, therefore, the ground that the petitioner was in India is incorrect and contrary to the record. He further submitted that from the visa stamp made in the passport, it appears that the petitioner was granted visa on 12.11.2004, and therefore upto that period, the petitioner was within India. Under the circumstances, the ground or reason that the petitioner was not in India is factually incorrect. It is further submitted that after impugned order dated 4.4.1997 was passed Tenancy Case No.12 of 1998 was filed by respondent nos.1 and 2 before the Mamlatdar, Khambhat in which purchase price was determined and the authority directed to sale the land. That as per the order passed by the competent authority and that they have already paid the purchase price for the land in question on 29.1.2003 and on the same day, purchase certificate of the land in question has been issued in their favour. It is further submitted that on the basis of the certificate issued in their favour, revenue entry No.14140 has been made which also came to be certified, against which the mother of the petitioner and other co-owners had preferred RTS Appeal No.64 of 2003 which came to be dismissed on 14.10.2003 by the competent authority. It is further submitted that, in fact, against the fixation of the purchase price, the appeal has been preferred before the Deputy Collector, Anand being Appeal No.17 of 2002 by the family members of the present petitioner having common interest and the next date of hearing is fixed on 23.2.2005. It is further submitted that one civil suit No.17 of 2002 is

also filed by the mother of the petitioner in the court of the learned Civil Judge (JD), Khambhat in which the application below Exh.5 was filed for interim relief which came to be dismissed.

#. From the aforesaid orders and the proceedings, Mr.Bhatt has submitted that, it cannot be said that the petitioner had no knowledge with regard to the order passed by the Gujarat Revenue Tribunal dated 4.4.1997 and in fact, from the aforesaid proceedings and entry No.14140, the petitioner was aware of the order passed by the Gujarat Revenue Tribunal dated 4.4.1997 and the false statement has been made only with a view to condone the delay in preferring the present petition after a period of seven years, and, therefore, requested to dismiss the present petition with costs.

#. There is no counter or affidavit-in-rejoinder filed by the petitioner to the affidavit-in-reply filed on behalf of respondent No.1. The factum of passing the order under Section 32-G of the Act in Tenancy Case No.12 of 1998 dated 5.12.2001 and determining the purchase price by the competent authority has not been disputed by the petitioner. It is also not disputed by the petitioner that respondent Nos.1 and 2 have paid purchase price and necessary sale certificate came to be issued in their favour. It is also not disputed by the petitioner that in pursuance of the certificate issued in favour of respondent No.1 - tenant, entry No.14140 was made in the revenue record and against which, the family members and mother of the petitioner have preferred RTS Appeal No.64 of 2003 which came to be dismissed on 14.10.2003. It is also not disputed by the petitioner that against fixation of the purchase price, the appeal has been preferred by the family members and mother of the petitioner before the Deputy Collector, Anand being Appeal No.17 of 2002 in the year 2002 itself. The purchase price came to be fixed and determined by the authority on the basis of the order passed by the Gujarat Revenue Tribunal dated 4.4.1997 dismissing the said revision application confirming the order passed by the Deputy Collector (Land Reforms) Appeals, Kheda under Section 32(1)(b) of the Act, and, therefore, it cannot be said that the petitioner has no knowledge with regard to the order passed by the Gujarat Revenue Tribunal dated 4.4.1997. Not only that, but the family members and mother of the petitioner had preferred the appeal before the Deputy Collector, Anand, being Appeal No.17 of 2002 challenging the order passed by the competent authority under Section 32-G of the Act fixing and determining the purchase price. If the mother and family members of the

petitioner can prefer the appeal before the Deputy Collector, Anand challenging the order of determining the purchase price under Section 32-G of the Act, certainly, the petitioner and/or her family members ought to have challenged the order passed by the Gujarat Revenue Tribunal dated 4.4.1997 before this Court. On the contrary, the petitioner has preferred the present petition in the month of June 2004, i.e. after a period of seven years and that too after the order passed under Section 32(1)(b) of the Act came to be implemented and the order came to be passed under Section 32-G of the Act determining and fixing the price and after the sale certificate issued in favour of the tenant, which is not required to be entertained after a period of seven years.

#. Under the circumstances, the present petition filed under Article 227 of the Constitution of India which is filed in the year 2004 challenging the order passed by the Gujarat Revenue Tribunal dated 4.4.1997 i.e. after a period of seven years, is not required to be entertained on the ground of delay and laches.

#. Under the circumstances, there is no substance in the present petition and hence the same is dismissed. Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated forthwith.

(M.R.Shah,J)

(pathan)